



Senate

General Assembly

File No. 78

January Session, 2009

Substitute Senate Bill No. 362

Senate, March 16, 2009

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING EQUAL PAY FOR EQUAL WORK.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-75 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) No employer shall discriminate in the amount of compensation
4 paid to any employee solely on the basis of sex. Any difference in pay
5 based on sex shall be deemed a discrimination within the meaning of
6 this section. [provided nothing herein shall be deemed to prevent the
7 operation of employment practices which recognize length of service
8 or merit rating as a factor in determining wage or salary rates.]

9 (b) As used in this subsection, "equal work" means work performed
10 by two or more employees that requires equal skill, effort and
11 responsibility and is performed under similar working conditions. An
12 employee establishes a prima facie claim of discrimination under this
13 section, if the employee demonstrates that his or her employer

14 discriminates on the basis of sex by paying wages to employees at the
15 employer's business at a rate less than the rate at which the employer
16 pays wages to employees of the opposite sex at such business for equal
17 work. It shall be a defense to a claim of discrimination under this
18 section that a differential in pay for equal work is made pursuant to (1)
19 a seniority system; (2) a merit system; (3) a system which measures
20 earnings by quantity or quality of production; or (4) a differential
21 system based upon a bona fide factor other than sex, such as education
22 training or experience. Said bona fide factor defense shall apply only if
23 the employer demonstrates that such factor (A) is not based upon or
24 derived from a sex-based differential in compensation, and (B) is job-
25 related and consistent with business necessity. Such defense shall not
26 exist where the employee demonstrates that an alternative
27 employment practice exists that would serve the same business
28 purpose without producing such differential and that the employer
29 has refused to adopt such alternative practice.

30 (c) No employer shall discharge, expel or otherwise discriminate
31 against any person because such person has opposed any
32 discriminatory compensation practice or because such person has filed
33 a complaint or testified or assisted in any proceeding pursuant to
34 section 31-76, as amended by this act.

35 Sec. 2. Section 31-76 of the general statutes is repealed and the
36 following is substituted in lieu thereof (*Effective October 1, 2009*):

37 (a) The Labor Commissioner shall carry out the provisions of section
38 31-75, as amended by this act, either upon complaint or upon [his] the
39 commissioner's own motion. For this purpose, the commissioner, or
40 [his] the commissioner's authorized representative, may enter places of
41 employment, inspect payrolls, investigate work and operations on
42 which employees are engaged, question employees and take such
43 action as is reasonably necessary to determine compliance with section
44 31-75, as amended by this act. [Any] At the request of any employee
45 who has received less than the wage to which the employee is entitled
46 under section 31-75, as amended by this act, the commissioner may

47 take an assignment of such wage claim in trust and may bring any
48 legal action necessary to collect such claim. In any action brought by
49 the commissioner, the employer who violates the provisions of section
50 31-75, as amended by this act, [shall be] may be found liable to the
51 employee or the employees affected for the difference between the
52 amount of wages paid and the maximum wage paid any other
53 employee for equal work, compensatory damages and punitive
54 damages if the violation is found to be intentional or committed with
55 reckless indifference to the employee's or employees' rights under
56 section 31-75, as amended by this act. [Action to recover such
57 difference may be maintained in any court of competent jurisdiction by
58 any one or more employees.] Any agreement to work for less than the
59 wage to which such employee is entitled under section 31-75, as
60 amended by this act, shall not be a defense to such action. [At the
61 request of any employee who has received less than the wage to which
62 he is entitled under section 31-75, the commissioner may take an
63 assignment of such wage claim in trust and may bring any legal action
64 necessary to collect such claim. If judgment is rendered against an
65 employer in any civil action brought to collect wages under the
66 provisions of this section, the employer shall be required to pay the
67 taxable costs and such reasonable attorney's fees as may be allowed by
68 the court.]

69 (b) Unless and except to the extent that a wage claim has been
70 assigned to the commissioner pursuant to subsection (a) of this section,
71 an action to redress a violation of section 31-75, as amended by this act,
72 may be maintained in any court of competent jurisdiction by any one
73 or more employees. Any agreement to work for less than the wage to
74 which such employee is entitled under section 31-75, as amended by
75 this act, shall not be a defense to such action. An employer who
76 violates section 31-75, as amended by this act, may be found liable for
77 the difference between the amount of wages paid and the maximum
78 wage paid any other employee for equal work, compensatory
79 damages, attorney's fees and costs, punitive damages if the violation is
80 found to be intentional or committed with reckless indifference to the
81 employee's or employees' rights under section 31-75, as amended by

82 this act, and such legal and equitable relief as the court deems just and
 83 proper.

84 (c) For purposes of this section, discrimination in compensation
 85 under section 31-75, as amended by this act, occurs when a
 86 discriminatory compensation decision is practiced or adopted, when
 87 an individual becomes subject to a discriminatory compensation
 88 decision or practice, or when an individual is affected by application of
 89 a discriminatory compensation decision or practice, and shall be
 90 deemed to be a continuing violation each time wages, benefits or other
 91 compensation is paid, resulting in whole or in part from such a
 92 decision or other practice.

93 (d) No action shall be brought [or any prosecution instituted] for
 94 any violation of section 31-75, as amended by this act, [unless within
 95 one year after the commission of the act complained of. Any person
 96 who violates section 31-75 or any employer who discriminates in any
 97 manner against any employee because such employee has filed a
 98 complaint or taken any other action as herein provided shall, upon
 99 conviction, be fined for each violation not more than two hundred
 100 dollars] except within two years of such violation or any act described
 101 in subsection (c) of this section.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2009	31-75
Sec. 2	October 1, 2009	31-76

Statement of Legislative Commissioners:

In subsection (b) of section 2, an incorrect statutory reference was changed in the second line and "reckless indifferent" was changed to "reckless indifference" for proper grammatical usage.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Labor Dept.	GF - Potential Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a minimal cost to the Department of Labor (DOL) associated with overtime or part-time staff to investigate and pursue gender wage claims. The bill allows the labor commissioner to investigate employee work and operations and take actions as reasonably necessary to determine compliance with the law.

The bill could also result in a minimal revenue loss associated with removing the \$200 fine for each violation of the bill's provisions.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 362*****AN ACT CONCERNING EQUAL PAY FOR EQUAL WORK.*****SUMMARY:**

This bill makes several changes to the law banning employers from discriminating based solely on gender in the amount of compensation paid to employees. The bill:

1. creates a statutory definition of “equal work,”
2. expands possible employer defenses against gender wage claims,
3. permits rather than requires a court to order awards when an employer is found to violate the law,
4. extends the period to make a claim of discrimination from one to two years following a violation,
5. repeals the \$200 fine for each wage discrimination violation or for retaliatory action against an employee bringing a gender wage complaint, and
6. expands the whistleblower protections to include those who testify or assist in a gender wage proceeding.

Under current law, the labor commissioner can initiate gender wage claims in civil court. The bill allows an employee or employees to bring civil action if the labor commissioner does not do so.

It also allows a civil action brought by an employee or employees to seek legal and equitable relief as the court deems just and proper. The labor commissioner does not have this option. Also, the bill does not

allow the commissioner to seek reasonable attorney's fees and costs, as is allowed under current law. But it does allow an employee to seek attorney's fees and costs.

The bill allows a court to award back pay and compensatory and punitive damages in claims brought by either the commissioner or an employee or group of employees. Current law allows awards for back pay in claims brought by the commissioner.

EFFECTIVE DATE: October 1, 2009

EQUAL WORK

The bill defines equal work as work performed by two or more employees that requires equal skill, effort, and responsibility and is performed under similar working conditions.

PERMITTED EMPLOYER DEFENSES AGAINST DISCRIMINATION CLAIMS

The bill expands the possible employer defenses against gender wage claims. Current law permits practices that recognize length of service or merit rating as a legitimate factor in determining wages. The bill adds other legitimate elements, but also limits the situations when they can be used.

The bill includes the current permitted practices (seniority or merit) and adds:

1. a system that measures earnings by quantity or quality of production, and
2. a differential system based upon a bona fide factor other than sex, such as education, training, or experience.

The bill specifies that the bona fide factors are only valid if the employer shows the system is (1) not based on or derived from sex-based differential in compensation and (2) job related and consistent with business necessity. Furthermore, the defense is not valid if the employee shows that an alternative compensation practice exists that

would serve the same business purpose without producing such a pay differential and that the employer has refused to adopt such an alternative.

ENFORCEMENT AND LEGAL REMEDY

By law, the labor commissioner may agree to take an employee's complaint of unfair wages or may investigate a possible situation on her own initiative. The law authorizes the commissioner, or her representative, to enter workplaces to inspect payrolls, investigate employee work and operations, question employees, and take action as is reasonably necessary to determine compliance with the law.

By law, the commissioner may take a gender wage claim to civil court in an effort to seek to collect on the claim. Under the bill, the commission may bring the claim to court and, if the commissioner is not bringing a claim, the employee or group of employees may initiate a court action.

Under the bill an employee can establish a prima facie claim of gender wage discrimination if the employee demonstrates that his or her employer discriminates on the basis of gender in paying wages to employees for equal work. The bill is not specific about what degree of evidence is necessary to establish the prima facie claim. The prima facie claim can be rebutted by the defenses for differential pay allowed under the bill.

Under the bill the court, if it finds the employer violated the law, may award (1) back pay consisting of the difference in the employee's pay and the top wage paid to other employees who perform equal work, (2) compensatory damages, and (3) punitive damages, if the violation is found to be intentional or committed with reckless indifference to the employee's rights. If the employee or employees are pursuing the claim, the bill gives the court the option of awarding attorney's fees and costs and such other legal and equitable relief as it deems just and proper.

Under current law, when the court finds a violation it must:

1. award back pay, consisting of the difference in the employee's pay and the top wage paid to other employees who perform equal work, taxable costs and reasonable attorney's fees and
2. fine the employer \$200 for each violation.

EXTENDED TIME TO FILE A CLAIM

The bill extends, from one to two years, the time to file a complaint following any violation or act that constitutes a continuing violation, such as each time wages or other benefits are paid.

WHEN DISCRIMINATION OCCURS

Under the bill discrimination occurs when:

1. a discriminatory compensation decision is practiced or adopted,
2. an individual becomes subject to a discriminatory decision or practice, or
3. an individual is affected by the application of a discriminatory decision or practice.

Under the bill, each time wages or other compensation are paid constitutes a new violation.

EXPANDED WHISTLEBLOWER PROTECTION

Under current law, it is a violation to discriminate against an employee who files a complaint or takes other action regarding gender wage discrimination. The bill expands the whistleblower protection to prohibit an employer from discharging, expelling, or otherwise discriminating against a person for (1) opposing a discriminatory compensation practice, (2) filing a complaint about one, or (3) assisting any proceeding regarding one.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/03/2009)